UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

COMBINED MANAGEMENT, INC.,	)	
	)	
Plaintiff	)	
	)	
v.	)	***Civil No. 93-39-P-H***
	)	
BRIAN K. ATCHINSON, SUPERINTENDENT, BUREAU OF INSURANCE, STATE OF MAINE,	)	
	)	
Defendant	)	

RECOMMENDED DECISION ON MOTION FOR PRELIMINARY INJUNCTION

This matter is before the court on the plaintiff's motion for a preliminary injunction to prohibit the defendant, Superintendent of the Maine Bureau of Insurance, from enforcing its compliance with Maine's workers' compensation law. The plaintiff claims that because it provides occupational disability insurance benefits through its subscription to a multi-employer welfare benefit plan covered by the Employee Retirement Income Security Act (``ERISA"), 29 U.S.C. 1001-1461, the Superintendent's authority to regulate its workers' compensation plan is preempted by ERISA.

BACKGROUND

The plaintiff, Combined Management, Inc. (``CMI"), is an employee leasing company located and duly registered in Maine. It pays the wages of the employees it leases to client

companies, withholds and remits applicable federal and state taxes and provides its leased employees with a variety of employee welfare benefits, including medical and surgical coverage, dental coverage, vision care coverage and accidental death and dismemberment coverage. These benefits are provided through a subscription to the International Association of Entrepreneurs of America Welfare Benefit Plan (``Plan"), which the plaintiff asserts is a multi-employer welfare benefit plan as defined by 29 U.S.C. 1002(3) and (37)(A). The Plan is established and maintained by the International Association of Entrepreneurs of America Trust (``Trust") for the benefit of the employees and dependents of members of the International Association of Entrepreneurs of America (``IAEA"). Among the benefits provided to the plaintiff's employees through the Plan are occupational injury and illness benefits like those mandated by the Maine workers' compensation laws currently in effect. CMI pays the entire premium for work-related injury and illness coverage. These benefits are neither separately insured nor separately administered.

In January 1993 the Maine Bureau of Insurance notified CMI that under Maine's workers' compensation law employers may satisfy their workers' compensation benefit obligations either by purchasing liability insurance from an insurer authorized to do business in Maine or by securing authorization from the Bureau to self-insure.[1] The Bureau made clear to the plaintiff that it did not approve CMI's subscription to the Plan as a discharge of its obligations under the workers' compensation law. CMI contends that the state's attempted regulation of its workers' compensation scheme represents an intrusion into the administration of an employee benefit plan covered by ERISA that is preempted by federal law. Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunction (``Plaintiff's Memorandum") at 5, 10-18 (Docket No. 4). The

[1] 39-A M.R.S.A. 403(1) provides, in relevant part, that ``[t]he employer may comply with this section by insuring and keeping insured the payment of such compensation and other benefits under a workers' compensation insurance policy." Section 403(3) provides the option of self-insurance. It states, in part, ``The employer may comply with this section by furnishing satisfactory proof to the Superintendent of Insurance of solvency and financial ability to pay the compensation and benefits, and depositing cash, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond with the board, in such sum as the superintendent may determine . . . ." 39-A M.R.S.A. 403(3).

Superintendent asserts that the Plan does not qualify as an ERISA-covered plan but that, even if it does, Maine's workers' compensation law does not ``relate to" it and so is not preempted by ERISA. Defendants's Objection and Memorandum of Law in Opposition to Plaintiff's Motion for Preliminary Injunction (``Defendant's Memorandum") at 7, 20 (Docket No. 11).

STANDARD OF REVIEW

In evaluating the plaintiff's entitlement to a preliminary injunction, the court must consider four factors, one of which is the likelihood of success on the merits. *Narragansett Indian Tribe v. Guilbert*, 934 F.2d 4, 5 (1st Cir. 1991); *see also Augusta News Co. v. News America Publishing, Inc.*, 750 F. Supp. 28, 31 (D. Me. 1990). With the consent of the parties, I agreed that the court would bifurcate its consideration of the ERISA preemption question which is at the heart of this litigation. Because the Superintendent contends that the Plan is not one covered by ERISA and that additional discovery would be required before that issue could be determined, it was agreed that the court would decide the following question first: Assuming, *arguendo*, that the Plan is a so-called ERISA employee benefit plan, is

Maine's workers' compensation law preempted by ERISA? *See* endorsement on Plaintiff's Motion to File Reply Memorandum (Docket No. 15). An affirmative answer will next require consideration of the Superintendent's assertion that the Plan is not an ERISA plan. A negative answer will foreclose the plaintiff from the relief it is seeking and necessarily terminate this litigation. In this agreed posture, then, the court effectively now has before it a defendant's motion to dismiss for failure to state a claim upon which relief can be granted.[2]

LEGAL ANALYSIS

ERISA establishes a comprehensive system for the federal regulation of private employee benefit plans, including both pension and welfare plans. 29 U.S.C. 1002. Section 1144(a) of ERISA provides that all state laws shall be superseded ``insofar as they now or hereafter relate to any employee benefit plan described in section 1003(a) and not exempt under section 1003(b)[3] . . . ." A state law ``relates to" an employee benefit plan ``if it has a connection with or reference to such a plan." *District of Columbia v. Greater Washington Bd. of Trade*, 113 S. Ct. 580, 583 (1992) (quoting *Shaw v. Delta Air Lines, Inc.*,

[2] Although both sides have submitted affidavits, it is not necessary to go beyond the allegations of the complaint to establish the factual framework necessary to a first-stage consideration of the preemption question as agreed upon.

[3] 42 U.S.C. 1003(b) provides for exemption from ERISA coverage in limited circumstances, including those in which a plan is maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation or disability insurance laws. 42 U.S.C. 1003(b)(3). Although the defendant suggests that there is an absence of evidence that CMI's workers' compensation program is combined significantly with other benefit programs, I will assume for purposes of this motion that it does not qualify for this exemption.

463 U.S. 85, 97 (1983)). Courts have been particularly critical of state laws which specifically refer to ERISA plans and single them out for special treatment. *McCoy v. Massachusetts Inst. of Technology*, 950 F.2d 13, 18 (1st Cir. 1991), *cert. denied*, 112 S. Ct. 1939 (1992). However, ERISA preempts state law which ``relates to" covered plans ```even if the law is not specifically designed to affect such plans, or the effect is only indirect'" *Greater Washington Bd. of Trade*, 113 S. Ct. at 583 (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990)) and even if the law is ```consistent with ERISA's substantive requirements'" (quoting *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985)).

While the Court has emphasized the expansive nature of ERISA preemption, its reach is not unlimited. ``Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law `relates to' the plan." *Shaw*, 463 U.S. at 100 n.21. The distinction between state laws that ``relate to" employee benefit plans and those that do not is far from clear. The First Circuit has suggested that where ``gray areas" exist, the court should look to the policy rationales behind ERISA and its preemption clause, which include protection of the rights and expectations of plan participants and assurance that plans are subject to a uniform body of benefit law with minimal administrative and financial burdens of compliance with conflicting state and federal directives. *McCoy*, 950 F.2d at 17-18.

Other circuits have provided some guidance for evaluating ``gray area" statutes. Comparing cases in which ERISA preemption was found to occur with those in which it was not, the Second Circuit concluded that preempted laws ``are those that provide an alternative cause of action to employees to collect benefits protected by ERISA, refer specifically to ERISA plans and apply solely to them, or interfere with the calculation of benefits owed to an employee." *Aetna Life Ins. Co. v. Borges*, 869 F.2d 142, 146 (2d Cir.), *cert. denied*, 493 U.S. 811 (1989). Those that are not preempted are ``laws of general application -- often traditional exercises of state power or regulatory authority -- whose effect on ERISA plans is incidental." *Id.* ``What triggers ERISA

preemption is not just any indirect effect on administrative procedures but rather an effect on the primary administrative functions of benefit plans, such as determining an employee's eligibility for a benefit and the amount of that benefit." *Id.* at 146-47.

Similarly, the Ninth Circuit has grouped state statutes held preempted because they ``relate to" ERISA plans into four categories: 1) laws that regulate the type of benefits or terms of ERISA plans; 2) laws that create reporting, disclosure, funding or vesting requirements for ERISA plans; 3) laws that provide rules for the calculation of the amount of benefits to be paid under ERISA plans; and 4) laws and common-law rules that provide remedies for misconduct resulting from the administration of ERISA plans. *Martori Bros. Distrib. v. James-Massengale,* 781 F.2d 1349, 1356-58 (9th Cir.), *cert. denied,* 479 U.S. 949 (1986). The court noted that the principle underlying all of the decisions finding preemption is that the state law regulates matters controlled by ERISA: disclosure, funding, reporting, vesting and enforcement of benefit plans. *Id.*

A recent application of the *Aetna Life* and *Martori Bros.* framework appears in *Employee Staffing Servs., Inc. v. Aubry,* No. C-92-4096 SAW, 1993 U.S. Dist. LEXIS 3948 (N.D. Cal. Mar. 17, 1993), a case strikingly similar to the one here before the court inasmuch as it too involved the question whether a state workers' compensation statute is preempted by ERISA.[4] In reviewing California's workers' compensation statute against the *Martori Bros.* standard, the court stated:

> The law is one [of] general application, and involves a traditional exercise of state power. It does not: provide for alternative causes of action for employees to collect benefits protected by ERISA; refer to ERISA plans; apply solely to ERISA plans; nor interfere with the calculation of benefits owed to employees. Further, it does not:

[4] Section 3700 of California's Labor Code is similar to 39-A M.R.S.A. 403 in that it provides that every private employer must secure the payment of workers' compensation by either obtaining insurance with an approved insurer or by receiving approval from the Director of Industrial Relations to self-insure. Approval is contingent upon the employer's furnishing proof of the ability to self-insure and to pay any compensation that may become due to its employees. Cal. Lab. Code 3700(a), (b). In *Employee Staffing Services*, the plaintiffs claimed that because they provided their employees with workers' compensation benefits though an ERISA-covered plan, ERISA preempted state regulation.

> regulate the benefits or terms of ERISA plans; create any reporting, disclosure, funding, or vesting requirements; provide rules for the calculation of benefits; nor provide remedies for misconduct arising from the administration of ERISA plans. Rather, the California Workers' Compensation law only requires that California employers purchase workers' compensation insurance or meet the state's requirements for self-insurance. Plaintiffs may comply with the state law without altering the [employee benefit] plan.

Id. at *11-*12. The court concluded that the law thus does not ``relate to" an ERISA-covered employee benefit plan and therefore is not preempted. *Id.* at *12.

Exposing Maine's workers' compensation law to similar scrutiny compels the same conclusion. It is apparent from the language of section 403 that its purpose is to guarantee the solvency of workers' compensation plans. The statute applies to all private employers, not just those who have adopted employee benefit plans covered by ERISA. It is not directed toward changing the rights or expectations of employee benefit plan participants. The plaintiff may comply with state law without altering its employee benefit plan although, admittedly, there may be duplication or increased cost. However, many state laws indirectly affect the cost of administering ERISA-covered plans but in doing so do not trigger ERISA preemption. *See Aetna Life*, 869 F.2d at 146 (where state statute does not affect structure, administration or type of benefits provided by ERISA plan, mere fact statute has some economic impact on plan does not require it be invalidated). As the Second Circuit has stated, ``[I]f ERISA is held to invalidate every State action that may increase the cost of operating employee benefit plans, these plans will be permitted a charmed existence that never was contemplated by Congress." *Rebaldo v. Cuomo*, 749 F.2d 133, 138-39 (2d Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985).

CONCLUSION

For the foregoing reasons, I recommend that the plaintiff's motion for preliminary injunction

be ***DENIED*** and that the action be ***DISMISSED***.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 15th day of June, 1993.

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David M. Cohen
United States Magistrate Judge